

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

DONALD PHILLIP SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:09-cv-01001

JOBARD SHAW,

Defendant,

DAVID BERKEBILE,

Interested Party.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Petitioner's September 14, 2009 letter-form Complaint requesting the initiation of criminal proceedings against another inmate based on the inmate's publication of "restricted personal information" (Document 1).<sup>1</sup>

By *Standing Order* (Document 2) entered on September 14, 2009, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On April 25, 2012, the Magistrate Judge submitted *Proposed Findings and*

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<sup>1</sup> A review of the Court's docket in this matter reveals that Plaintiff neither paid the filing fee for initiation of this civil action, nor sought permission to proceed in forma pauperis. The pertinent documentation for doing so was mailed to the Plaintiff on September 14, 2009.


*Recommendation* (Document 4) wherein it is recommended that this Court dismiss Plaintiff's letter-form Complaint and remove this matter from the Court's docket.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS**, for these reasons, that the Petitioner's letter-form Complaint (Document 1) be **DISMISSED**, and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, to counsel of record and to any unrepresented party.

ENTER: May 18, 2012

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA